Appendix Table C–1 New York ratings

All full-power stations in the New York DMA, plus cable

Station	City of origin	Affiliation	Rating	Percent of total ratings	Percent squared
WNYW	New York	FOX	4.96	10.4	107.8
WCBS	New York	CBS	5.08	10.6	113.1
WNBC	New York	NBC	6.23	13.0	170.1
WPIX	New York	IND	4.27	8.9	79.9
WABC	New York	ABC	7.33	15.3	235.4
WWOR	Secaucus, NY	IND	3.69	7.7	59.7
WNET	New York	PBS	1.37	2.9	8.2
WNJU	Newark	IND	0.46	1.0	0.9
WLIW	Garden City, NY	PBS	0.35	0.7	0.5
WNYC	New York	PBS	0.21	0.4	0.2
WXTV	Paterson, NJ	IND	0.85	1.8	3.2
WLIG	Riverhead, NY	IND	0.18	0.4	0.1
WNJN	Little Falls, NJ	PBS	0.11	0.2	0.1
WNYE	New York	PBS	0.05	0.1	0.0
Cable			12.63	26.4	699.0
Total			47.77	100.0	1478

Commercial full-power stations within 35-mile radius of New York, plus cable

Station	Rating	Percent of total ratings	Percent squared
WNYW	4.96	15.1	227.0
WCBS	5.08	15.4	238.1
WNBC	6.23	18.9	358.1
WPIX	4.27	13.0	168.2
WABC	7.33	22.3	495.8
WWOR	3.69	11.2	125.6
WNJU	0.46	1.4	2.0
WXTV	0.85	2.6	6.7
Cable*	0.05	0.2	0.0
Total	32.92	100.0	1622

*Cable is assigned a rating equal to that of WNYE.

Source: See text.

Appendix Table C–2 Cleveland ratings

All full-power stations in the Cleveland DMA, plus cable

Station	City of origin	Affiliation	Rating	Percent of total ratings	Percent squared
WEWS	Cleveland	ABC	8.60	18.94	358.7
WKYC	Cleveland	NBC	8.64	19.03	362.0
WJW	Cleveland	FOX	4.91	10.81	116.9
WDLI	Canton	IND	0.08	0.18	0.0
WVIZ	Cleveland	PBS	1.25	2.75	7.6
WAKC	Akron	ABC	0.77	1.70	2.9
WUAB	Lorain	IND	3.23	7.11	50.6
WOIO	Cleveland	CBS	5.08	11.19	125.1
WBNX	Akron	IND	1.26	2.77	7.7
WEAO	Akron	PBS	0.34	0.75	0.6
WQHS	Cleveland	IND	0.09	0.20	0.0
WOAC	Canton	IND	0.18	0.40	0.2
Cable			10.98	24.18	584.7
Total			45.41	100.00	1617

Commercial full-power stations within 35-mile radius of Cleveland, plus cable

Station	Rating	Percent of total ratings	Percent squared
WEWS	8.60	26.32	692.9
WKYC	8.64	26.45	699.4
WJW	4.91	15.03	225.9
WAKC	0.77	2.36	5.6
WUAB	3.23	9.89	97.7
WOIO	5.08	15.55	241.8
WBNX	1.26	3.86	14.9
WQHS	0.09	0.28	0.1
Cable*	0.09	0.28	0.1
Total	32.67	100.00	1978

*Cable is assigned a rating equal to that of WQHS.

Source: See text.

Appendix Table C-3 Portland ratings

All full-power stations in Portland DMA, plus cable

Station	City of origin	Affiliation	Rating	Percent of total ratings	Percent squared
KOIN	Portland	CBS	6.16	14.8	218.6
KPTV	Portland	IND	3.92	9.4	88.5
KGW	Portland	NBC	6.81	16.3	267.2
KEBN	Salem	IND	0.12	0.3	0.1
KOPB	Portland	PBS	1.50	3.6	13.0
KATU	Portland	ABC	7.24	17.4	302.0
KBSP	Salem	IND	0.08	0.2	0.0
KPDX	Portland	FOX	3.60	8.6	74.7
KNMT	Portland	IND	0.13	0.3	0.1
Cable			12.10	29.0	843.6
Total			41.66	100.0	1808

Commercial full-power stations within 35-mile radius of Portland, plus cable

Station	Rating	Percent of total ratings	Percent squared
KOIN	6.16	22.0	484.3
KPTV	3.92	14.0	196.1
KGW	6.81	24.3	592.0
KATU	7.24	25.9	669.1
KPDX	3.60	12.9	165.4
KNMT	0.13	0.5	0.2
Cable*	0.13	0.5	0.2
Total	27.99	100.0	2107

*Cable is assigned a rating equal to that of KNMT.

Source: See text.

Appendix Table C–4 Richmond ratings

All full-power stations within the Richmond-Petersburg DMA, plus cable

Station	City of origin	Affiliation	Rating	Percent of total ratings	Percent squared
WAWB	Ashland	IND	0.1	0.4	0.1
WCVE	Richmond	PBS	0.4	1.5	2.2
WCVW	Richmond	PBS	0.1	0.4	0.1
WRIC	Richmond	ABC	6.0	22.1	486.6
WRLH	Richmond	FOX	2.9	10.7	113.7
WTVR	Richmond	CBS	7.1	26.1	681.4
WWBT	Richmond	NBC	5.8	21.3	454.7
Cable			4.8	17.6	311.4
Total			27.2	100.0	2050

Commercial full-power stations within 35-mile radius of Richmond, plus cable

Station	Rating	Percent of total ratings	Percent squared
WAWB	0.1	0.5	0.2
WRIC	6.0	27.3	743.8
WRLH	2.9	13.2	173.8
WTVR	7.1	32.3	1041.5
WWBT	5.8	26.4	695.0
Cable*	0.1	0.5	0.2
Total	22.0	100.0	2655

*Cable is assigned a rating equal to that of WAWB.

Source: See text.

Appendix Table C–5   Amarillo ratings

All full-power stations in Amarillo DMA, plus cable

Station	City of origin	Affiliation	Rating	Percent of total ratings	Percent squared
KACV	Amarillo	PBS	0.5	1.6	2.5
KAMR	Amarillo	NBC	5.4	17.0	290.2
KCIT	Amarillo	FOX	4.7	14.8	219.8
KFDA	Amarillo	CBS	6.5	20.5	420.4
KVII†	Amarillo	ABC	8.0	25.2	636.9
Cable			6.6	20.8	433.5
Total			31.7	100.0	2003

Commercial full-power stations within 35-mile radius of Amarillo, plus cable

Station	Rating	Percent of total ratings	Percent squared
KAMR	5.4	21.5	462.8
KCIT	4.7	18.7	350.6
KFDA	6.5	25.9	670.6
KVII†	8.0	31.9	1015.9
Cable*	0.5	2.0	4.0
Total	25.1	100.0	2504

† KVII operates a satellite station, KVIH, in Clovis, NM. KVII and KVIH combined received a rating of 8.0; KVII alone received a rating of 7.5.
*Cable is assigned a rating equal to that of KACV.
Source: See text.

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APPENDIX D

EVIDENCE ON ADVERTISING PRODUCT MARKETS

Appendix D Evidence on advertising product markets

A. Evidence used to define antitrust markets

There is abundant evidence of competition between different types of advertising media. As is typically the case when one is defining markets that are relevant for antitrust analysis, there are no econometric studies that demonstrate quantitatively the extent of substitution by advertisers among various types of advertising in response to changes in relative prices.[176] It would be very difficult to conduct such a study because transactions prices for alternative media, as well as non-price terms, are negotiated for each advertising contract and are not publicly available. When definitive statistical evidence is not available, the practice in antitrust analysis is to rely on other types of information to define relevant markets. In the case of advertising, relevant markets are often defined with the assistance of information obtained in interviews with advertisers and executives at advertising agencies. Since these are the people that make decisions about which media to use for advertising campaigns, their beliefs about substitutability among media in fact determine the extent of substitution that will take place. These people are not mere bystanders. Similarly, the materials that sellers of advertising use to market their services shed light on the extent to which various media are substitutes, because sellers of advertising often compare their media with what advertisers consider to be alternative advertising media. Facts in company documents, including public documents such as SEC Forms 10-K, and in the trade press also shed light on competition among advertising media.

B. National spot and network advertising compete

National spot advertising refers to sales of advertising time as well as time for infomercials and other paid programming by station groups, national sales representatives of stations, and "unwired" networks, on the one hand, to national advertisers, their advertising agencies or media buyers,

176 *See* comments on Seldon and Jung, *supra* note 28.

on the other.[177] Contrary to the Commission's tentative conclusion, national spot competes in the national advertising market with broadcast network, cable network and syndication advertising, not to mention non-video advertising.

The Commission's tentative conclusion is particularly surprising in light of the fact that Commission staff and the Commission itself have concluded on a number of occasions during the past four decades that national spot is a substitute for network advertising.

- In 1991, Commission staff interviewed advertising agency executives and reported that "national spot advertising is considered a substitute for network and national cable advertising."[178]

- In 1984, the principal authors of the Commission's 1980 Network Inquiry Special Staff report concluded that national spot was the closest substitute for network advertising.[179]

- In the late 1950s, in determining that the networks should not be permitted to represent their affiliates in selling national spot advertising, the Commission found that network and national spot were in the same market. Moreover, this finding was based on empirical evidence from advertising agencies:

  > National spot, of all the alternative means of advertising, is the closest substitute for networking. While national spot is not a complete substitute for network advertising, the two methods of reaching a national audience are sufficiently similar to be included in the same market. Advertising agencies agree almost unani-

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177 Unwired networks package spot advertising time on a set of stations broadcasting different programs and sell the packages in the up-front advertising marketplace. *See* Reece, *supra* note 82, at 26–30.

178 Setzer and Levy, *supra* note 35, at 127.

179 STANLEY M. BESEN, ET AL., MISREGULATING TELEVISION: NETWORK DOMINANCE AND THE FCC 79–80 (1984).

mously that when network time is not available, national spot is the next best alternative.[180]

Spot and network advertising are substitutes both for suppliers and for many buyers. On the supply side, as a result of market forces, one expects that advertising time on network programs tends to be shared between networks and stations so that, at the margin, additional network advertising time yields the same profits as additional spot advertising time for all affiliates clearing the program.[181] The relative quantities of network and spot advertising are also affected by changes in the number of hours programmed by the networks and in the number of hours that affiliates clear network programming.[182]

On the demand side, the same national advertisers typically use both network and spot advertising.[183] The extent to which a given advertiser uses one versus the other depends on trade-offs between cost and reach. The advantage of national spot to national advertisers is that an advertising campaign can be focused on, or supplemented in, the geographic areas where viewers are most likely to purchase the advertised product. Although the cost per thousand viewers is likely to be lower for an advertisement carried by a broadcast network than for a set of spots with the same reach,[184] a network buy often involves some wasted coverage of

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180 *Network Representation of Stations in National Spot Sales*, 27 FCC 697, 716 (1959), quoting FCC, NETWORK STUDY STAFF, REPORT ON NETWORK BROADCASTING 176 (1957).

181 The interdependence between network and spot prices is explained in FCC, NETWORK INQUIRY SPECIAL STAFF, THE MARKET FOR TELEVISION ADVERTISING, PRELIMINARY REPORT 7 (1980).

182 Total hours of programming offered by ABC, CBS and NBC declined by 25 hours per week between 1977 and 1994. Economists Incorporated, *supra* note 138, at 90.

183 *See* Appendix Table E-11.

184 There is disagreement in the literature regarding the relative costs of reaching television households nationwide using network and spot advertising, and that literature is dated. Most studies indicate that media and transactions costs for spot advertising exceed those costs for network advertising with the same reach. Using published rate cards, Peterman found only slight differences in the costs of reaching equivalent audiences with network and spot advertising. John Peterman, *Differences between the Levels of Spot and Network Television Advertising Rates*, 52 JOURNAL OF BUSINESS 549–61 (Oct. 1979). However, based on company

parts of the country where the advertiser has few if any outlets or for other reasons has poor sales prospects.[185]

Thus, if one were to evaluate a number of advertising campaigns by national advertisers, one would find:

- In some cases, it is important to an advertiser that its campaign cover the entire country. In such cases, network advertising is likely to be cheaper than national spot advertising.

- In other cases, a national spot buy limited to areas of the country that an advertiser is interested in reaching will be significantly lower in cost than a network buy.

- Many cases will fall between the preceding two possibilities. That is, at existing prices for network and spot advertising, an advertiser will be close to indifferent between a network advertising campaign, on the one hand, and a national spot campaign limited to those parts of the country where the value of exposure exceeds the spot price, on the other. For these advertisers, network and spot advertising are close substitutes.

- Also, it is common for an advertiser to buy both network advertising and spot advertising for a given campaign. The advertiser buys network advertising to provide a base level of coverage nationwide. The advertiser then buys additional coverage of markets where per capita sales are relatively high and where network affiliates have relatively low viewing shares. In such cases, at existing prices for network and spot advertising, an advertiser will be close to indiffer-

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documents from the 1970s, Hilke and Nelson concluded that the cost of spot advertising exceeded the cost of network advertising with the same coverage by over 30 percent. John Hilke and Philip B. Nelson, *An Empirical Note from Case Documents on the Economies of Network Television Advertising*, REVIEW OF INDUSTRIAL ORGANIZATION (1989). Similarly, David Poltrack, CBS Exec. VP-Research and Planning, reported that the cost of a network buy was about the same as the total cost of a national spot buy limited to the top 50 markets, which had about 67 percent of television households. DAVID POLTRACK, TELEVISION MARKETING 294 (1983).

185 POLTRACK, *supra* note 184, at 293–96.

ent between an extra dollar spent on network advertising, on the one hand, and an extra dollar spent on national spot advertising in certain areas of the country, on the other.

Models have been developed by advertising agencies, media planners, and others to determine an advertiser's optimal allocation between network and spot advertising. For example, CBS developed a model that allocates a television advertising budget between network and spot advertising according to the prices of network and spot advertising as well as network and spot audience delivery and the sales potential of the advertiser's product in each local area.[186] The fact that the allocation between network and spot advertising depends on the relative prices of these two types of advertising implies that they compete.

The Network Television Association recently produced a network television planning guide that compares network advertising with national spot advertising as well as with syndication, cable, radio, newspaper and magazine advertising. See Appendix H. Additional evidence of competition between network and spot advertising is presented in Section III.E in the body of this report.[187]

According to a 1987 publication by the CBS/Broadcast Group:

> National Spot Television is also a competitor to network television for the national advertiser's dollar. As the unit prices of network commercials have grown many advertisers have found the threshold entry level prohibitively expensive. Instead of attempting to spread their limited dollars too thin in a national network campaign they have concentrated spending in those markets of greatest potential for them....But, as with barter syndication and national cable advertising, national spot advertising remains vulnerable to the lowering of network prices. In the Fourth Quarter of 1986 and the First Quarter of 1987 it was apparent that the networks were also winning back dollars from national spot television.[188]

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186 *Id.* at 296.

187 *See* the discussion that cites Walley, *supra* note 41, at 2.

188 The report states that the networks lowered rates in 1986. CBS/Broadcast Group, NETWORK TELEVISION IN TRANSITION, Aug. 1987, at 25–26.

Competition between network and spot advertising is also confirmed by the following trade press report from late 1987:

> The Proctor & Gamble Co. shied away from network price increases and cut two unwired deals. Tribune Broadcasting Co. linked its six independent stations [including superstations WPIX and WGN] with another superstation, Turner Broadcasting System's SuperStation TBS, to form Tribune Plus, which sold a package of ad time to P&G for a reported $10 million. The same month, Katz Television [a representative firm that sells national spot] cut a deal—also worth a reported $10 million—with P&G.[189]

The evidence discussed above supports a conclusion that national spot advertising competes in the relevant market with broadcast network, syndication and cable network advertising.[190]

C. Barter-syndication competes with network and national spot advertising

Many syndicated programs have coverage rates comparable to network programs. Examples of syndicated programs that are cleared by stations with combined coverage rates of 90 to 99.5 percent of television households are listed in Appendix Tables D–1 and D–2. By comparison, ABC, CBS and NBC programs have an average clearance rate by their affiliates of 89.7 percent in non-prime time and 97.7 percent in prime time.[191]

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189 Reece, *supra* note 82, at 28, brackets added.

190 *See* OWEN & WILDMAN, *supra* note 58, at 153–57.

191 Economists Incorporated, *supra* note 138, at Appendix Table D–1. Network percentages are calculated for affiliates in markets with three or more commercial broadcast stations. The clearance data do not reflect areas where the networks do not have affiliates or areas with fewer than three commercial stations.

Appendix Table D–1 Coverage of syndicated programs, week ending Feb. 12, 1995[192]

Program	Coverage	Rating
Wheel of Fortune	99	14.4
Jeopardy!	99	11.7
Oprah Winfrey Show	99	9.2
Entertainment Tonight	94	8.2
Star Trek: Deep Space Nine	99	8.2
Baywatch	97	7.9
Wheel of Fortune - Wknd.	90	7.8
Roseanne	96	7.1
Hard Copy	95	6.7
Inside Edition	93	6.7
Simpsons Combo 1	85	6.7
Family Matters	94	6.4
Fresh Prince of Bel-Air	87	6.2
Married...With Children	93	6.2
Wrestling Network	93	5.7
Cops	95	5.5
Ricki Lake	97	5.5
A Current Affair	95	5.3
Journeys of Hercules	93	5.3
World Wrestling Fed. PR	90	5.2

192 Source: A.C. Nielsen data, reported in VARIETY, Feb. 27–Mar. 5, 1995, at 53. Rating is for nonduplicated viewing for multiple airings of the same show.

Appendix Table D–2 **Coverage of top five first-run children's programs, November 1994**[193]

Program	Coverage	Rating
VR Troopers	81	6.9
Aladdin	91	6.8
Gargoyles	86	4.1
Bonkers	90	3.7
Goof Troop	89	3.4

In many cases, syndicated programs have higher coverage rates than network shows during the same or other dayparts. In the case of first-run programs, it is reported that "syndicated talk shows such as Sally Jesse Raphael, Regis & Kathie Lee and Geraldo, now dominate the pre-noon hours of Daytime, where network coverage has fallen to 83%."[194] The coverages for these three syndicated shows are: Sally Jesse Raphael, 95 percent; Regis & Kathie Lee, 98 percent; and Geraldo, 92 percent.[195] Some of the animated programs that make up the Disney Afternoon have high clearance rates on weekday afternoons (see Appendix Table D–2). Syndicated programs such as *Wheel of Fortune* and *Jeopardy!* dominate the prime-time access period (see Appendix Table D–1). In 1993/94 there were fourteen hour dramas in first-run syndication.[196] These were often aired by independent stations during prime-time and by affiliates in the weekend access period. For example, in the case of *Kung Fu: The Legend*

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193 Source: Paul Kagan Associates, TV PROGRAM INVESTOR, Jan. 18, 1995. Kagan analysis of A.C. Nielsen Cassandra Ranking Report for Equivalent National Ratings, Vol. B, Nov. 1994.

194 ADVERTISER SYNDICATED TELEVISION ASSOCIATION, SYNDICATION: FIFTH NETWORK, GUIDE TO ADVERTISER-SUPPORTED SYNDICATION, 1994, at a–6 (hereinafter ASTA).

195 A.C. Nielsen, National Station Index, Nov. 1994.

196 ASTA, *supra* note 194, at a–4.

Continues and *Babylon 5*, 76 percent and 71 percent, respectively, of coverage was during prime time.[197]

In the case of both first-run and off-network programs with high coverage rates, syndicators bundle ads together with programs, arrange their broadcast by stations across the country, and sell the ads to national advertisers. Data on barter-syndication include the new United Paramount and WB networks. In their first month United Paramount and WB reportedly "cleared several program nights in stations representing more than 75% of TV households."[198]

Advertising sold by syndicators clearly competes in the national advertising marketplace with network and national spot advertising. Most barter syndication advertising revenue is probably earned by programs that have high national coverage. In any case, advertising on syndicated programs with lower coverage can be supplemented with spot advertising in any desired areas that are not covered. There are 160 syndicated programs, with an average household rating of 2.3, that reach more than 50 percent of television households.[199]

Sellers of syndication, network and national spot advertising see each other as close competitors.[200] For example:

- The networks monitor competition from syndicated advertising. For example, one of the networks produces a quarterly review of syndication that compares the network's programs with syndicated programs along dimensions that are relevant to advertisers: cover-

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197 A.C. Nielsen, National Station Index, Nov. 1994.

198 Paul Kagan Associates, *First-Run Hitting a Home Run with Stations*, TV PROGRAM INVESTOR, Feb. 1, 1995.

199 Paul Kagan Associates, *Syndication Season: New Shows Stage a Comeback*, TV PROGRAM INVESTOR, Jan. 18, 1995.

200 *See also*, *New Kids in the Animation Block*, BROADCASTING, Nov. 4, 1985, which reports: "Syndicated animation has been taking a bite out of children's programming advertising revenue that the three television networks have traditionally had largely to themselves. The increase in the number of shows like Thundercats and He-Man is contributing to flat or [only] marginally increased prices for advertising in the networks' Saturday morning schedules."

age of television households, time of day of clearances, ratings for demographic groups targeted by advertisers, minutes of commercials per program, and advertising expenditures broken down by advertiser on each program.

- The marketing materials for network advertising explicitly compare network advertising with syndicated advertising. Several excerpts from ABC's and NBC's marketing materials are included at Appendix I.

- In a 1987 publication, the CBS/Broadcast Group states:

  There is widespread disagreement about whether national advertisers' barter syndication advertising dollars come from network television budgets or national spot television budgets. The answer is probably that they come partially from both. In 1986, when independent stations suffered through a tough fourth quarter, they realized that all of the barter advertising in their children's programming had eroded their traditional Christmas season toy [national spot] advertising market.[201]

- According to a syndicator:

  We find that there is a certain segment of advertisers moving more money into syndication," said Harvey Gamm, vp advertising sales at Television Program Enterprises, a New York-based syndicator. "The networks are out with strong (price) increases but are not guaranteeing the same ratings that they did in previous years, and some (media buyers) won't want to pay those prices. The result will be additional money going into syndication." Gamm, like other syndicators, reports record sales.[202]

- In an advertising supplement to *Advertising Age*, the Advertiser Syndicated Television Association (ASTA) positions syndication as the fifth network for national advertisers:

  In terms of programming, ratings, coverage and demographics, syndication offers advertisers media benefits comparable to the

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201 CBS/Broadcast Group, *supra* note 188, at 25.

202 Steve Brennan, *Syndication Boom Alive, Well at Lower Volume, Kagan Says*, THE HOLLYWOOD REPORTER, June 25, 1990.

traditional networks....Having virtually taken over early Daytime and Kids, and dominating Early Fringe/Early Prime, it is moving into Prime Time with programming competitive with the best of network....This is why it deserves to be considered "The Fifth Network."[203]

- The same ASTA supplement features a discussion with television media buyers that contains the following interchange:

  Tim Duncan (ASTA): Syndication is a big part of a lot of the changes that have gone on in television. What role does it play in your media plans?

  Rino Scanzoni (Exec. VP, Televest): We really look at it as just part of the overall national broadcast landscape. We don't section it out as a separate venue.

  Bob Silberberg (Exec. VP, Backer Spielvogel Bates): ... What we would prefer to see them [our clients] do...is look at the options in media in terms of the target demographics. It would then cut across network or syndication or even cable.

  Duncan: You're saying it's all television. It's not specifically network and syndication or cable.

  Scanzoni: Right.[204]

The evidence discussed above supports a conclusion that barter syndication advertising competes in the relevant product market with broadcast network, national spot and cable network advertising.

D. Competition between cable and broadcast television advertising

The Commission tentatively concludes that national cable network advertising competes with broadcast network advertising. This is certainly correct, particularly in the case of cable networks that reach a large share of cable subscribers.[205] Approximately 92 percent of cable network adver-

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203 ASTA, *supra* note 194, at a–5.

204 *Id.* at a–9.

205 It is sometimes suggested that national advertisers want a minimum of 75 percent coverage for many ad campaigns. According to New World, "programming should reach a minimum of approximately 75% to 80% of the total national

tising revenue is earned by the 16 national advertising-supported basic cable networks that reach 80 percent or more of cable subscribers (Appendix Table E–9).[206]

In addition to advertising sold by cable networks, advertising is sold by cable systems to national advertisers as national spot and to local advertisers as local spot. In order to sell spot advertising a cable system must install equipment to insert commercials into a network's local availabilities[207] or into local programming. Cable systems serving 93 percent of the cable subscribers that receive advertising-supported cable networks have equipment to insert spot ads in at least some programming services,[208] on average 13 in 1993.[209] In 1993, an estimated 74 percent of cable spot advertising revenue was from availabilities on five networks: ESPN (20.2 percent), CNN (20.0 percent), USA Network (14.3 percent), Turner Network Television (12.4 percent) and Lifetime (7.3 percent).[210]

Spot cable advertising is becoming a closer substitute for broadcast television spot advertising because of clustering of cable systems owned by

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market in order to interest national television broadcast advertisers." New World Communications Group, *1993 SEC Form 10-K*, at 2. However, like broadcast national spot, advertising on cable networks that reach lower shares of cable subscribers competes in the national advertising market, because advertisers will make such buys at an appropriately discounted price.

206 Subscriber numbers for Dec. 31, 1994, are from Paul Kagan Associates, CABLE TV ADVERTISING, Jan. 25, 1995, at 8, and KAGAN MEDIA INDEX, Feb. 24, 1995, at 14. Cable network advertising revenue figures are from Paul Kagan Associates, CABLE TV ADVERTISING REPORT, 1994, at 23. In addition to national cable networks, there are many regional networks. Cabletelevision Advertising Bureau, 1994 CABLE TV FACTS, at 8, reports 1994 advertising revenue for regional sports and news networks of $185 million, compared to $2.99 billion for national cable networks and $4.43 billion for cable national and local spot.

207 "Availabilities" are commercial time slots in network programming available to be sold by local affiliates.

208 Data from Paul Kagan Associates, KAGAN MEDIA INDEX, Feb. 24, 1995, at 14.

209 Paul Kagan Associates, THE CABLE TV ADVERTISING REPORT, 1994, at 26.

210 *Id.*, at 25.

MSOs[211] and the development of cable interconnects,[212] which reduce the transactions costs of buying cable time over a geographic area comparable to that covered by a broadcast station. Advertisers buying time through an interconnect can buy time on either some or all of the systems affiliated with the interconnect. Paul Kagan Associates estimates that in 1994 there were 74 interconnects that covered 29.7 million cable subscribers and had gross revenue of $399 million.[213] Moreover, a cable system is able to offer advertising time on a number of cable networks in order to enlarge the audience it sells.

MSOs and interconnects in major markets as well as regional networks sell national spot advertising through national sales representatives. The two large representatives are National Cable Communications (NCC), in which four MSOs (Comcast, Continental Cablevision, Cox and Time Warner) have a combined 50 percent ownership, and Cable Networks, Inc. (CNI), owned by Cablevision Systems. According to a senior vice-president, CNI has done "a fair amount of spadework in our industry to position ourselves as severe competition to the broadcasters."[214] Paul Kagan Associates estimates that cable national spot revenue was $200 million and that cable regional sports network revenue was $174 million in 1994.[215]

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211 See, for example, Paul Kagan Associates, *Time Warner: King of Clusters*, CABLE TV ADVERTISING, Feb. 28, 1995, at 8, which reports that if current cable system deals are completed, about 8 million, or 75 percent, of Time Warner's subscribers will be in 33 clusters with 100,000+ subs in each cluster.

212 For data on interconnects and their advertising revenues, see Paul Kagan Associates, *Cable TV Interconnect Ad Sales Survey*, CABLE TV ADVERTISING, Dec. 31, 1994, at 1–5.

213 Paul Kagan Associates, THE CABLE TV ADVERTISING REPORT, 1994, at 5, 28.

214 The breakdown for projected 1993 ad revenue was National Cable Advertising (NCA), $70 million; CNI, $68 million; and Cable Media Corp. (CMC), $24 million. In 1994, NCA and CMC merged to form NCC. Linda Moss, *Rival Reps Slug It Out*, MULTICHANNEL NEWS, Apr. 19, 1993, at 1A.; Linda Moss, *NCA-CMC Merger Sparks Reaction*, MULTICHANNEL NEWS, July 4, 1994, at 3.

215 Paul Kagan Associates, THE CABLE TV ADVERTISING REPORT, 1994, at 1, 4.

At the local level, as the National Association of Broadcasters has noted, "cable systems are aggressively selling advertising in competition with local broadcasters."[216]

The following points provide further evidence of competition between cable and broadcast advertising:

- The Cabletelevision Advertising Bureau promotes cable television advertising as an alternative to broadcast television advertising. See Appendix J.

- The Television Bureau of Advertising (TvB), whose goal is to increase sales of spot advertising on broadcast television, supplies its member stations with publications that promote spot compared to cable. Three examples are *The World According to Cable and a Second Opinion* (1994), *For Political Advertisers Who Are Thinking of Using Cable* (1993) and *The Pricing of Cable vs. Broadcast Television* (1994). See Appendix K.

- The materials produced by the networks to sell network advertising explicitly compare broadcast network advertising with cable network television advertising. Several excerpts from ABC's and NBC's marketing materials are included in Appendix I and Appendix L.

- In a 1987 publication, the CBS/Broadcast Group states:

  > We expect barter syndication and national cable advertising to continue to grow at a rate greater than network television. However, in 1986 both of these competitors proved to be vulnerable to a lowering of network prices. As the networks found their market softening, they were able to effectively win back some money from these competitors by lowering rates. As a result the revenue growth of both barter syndication and national cable television slowed appreciably in 1986.[217]

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216 *Comments of the National Association of Broadcasters,* in Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91-221, FCC, Nov. 21, 1991, at 9.

217 CBS/Broadcast Group, *supra* note 188, at 25.

There is also confirmation of competition between cable and broadcast television for advertising dollars from anecdotal evidence:

- According to a press report, when the Fox affiliate in Kansas City dropped Fox's kids programming in 1994, children's advertisers turned to advertising on children's programs on cable.[218]

- In numerous local areas, including Phoenix, when broadcast stations shuffled their network affiliations in 1994, creating uncertainty about the audiences they would deliver, advertisers such as United Airlines reportedly moved money to cable advertising.[219]

- In response to the Major League Baseball Strike in 1994, cable systems and interconnects reportedly targeted advertisers who had bought heavy baseball schedules on broadcast television, and "the Boston interconnect has already brought over a major pizza chain from broadcast. 'Even before the strike, we began to work on diverting those (broadcast) dollars,' Sohinki [Jeff Sohinki, general manager of the Boston interconnect] said. 'We checked the Nielsen Monitor Plus Reports to see who was buying (Boston Red Sox) baseball regionally.' Adlink [the Los Angeles interconnect] did a similar check of MediaWatch, formerly known as Broadcasting Advertisers Reports, and has brought over some broadcast accounts such as auto and oil companies." The general manager of Cable AdNet, the Pittsburgh interconnect, indicated that he hoped that 25 percent of his company's sports advertising revenue would be accounted for by advertisers that switched from broadcast.[220]

Data on television advertising expenditures include not only commercials typically lasting between 15 and 120 seconds, but also paid programs such as infomercials lasting 30 minutes and home shopping programs

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218 Linda Moss, *Operators Cash In On Station Affiliation Switches*, MULTICHANNEL NEWS, Oct. 24, 1994, at 20.

219 *Id.*

220 Linda Moss, *Local Cable Tries to Profit from Ball Strike*, MULTICHANNEL NEWS, Aug. 29, 1994, at 22.

sometimes lasting several hours at a time. Cable clearly is a major competitor with broadcast stations in sales of time for infomercials and home shopping programs. Infomercial companies purchase time for exactly the same programs on broadcast stations, on cable networks, and on local cable systems. Of the $226 million that was spent buying media time for infomercials in the fourth quarter of 1994, 35 percent was spent on national cable and 4 percent was spent on satellite and regional cable, while the balance of 61 percent went to television stations.[221]

Already in the mid-1980s, when cable viewing was much lower than at present, the staff of the Federal Trade Commission argued that cable television advertising constrained the pricing of broadcast television advertising.[222]

The evidence discussed above supports a conclusion that cable network and cable national spot advertising compete in the relevant market with broadcast television, national spot, and syndication advertising, as well as a conclusion that cable local spot advertising competes with broadcast television local spot advertising.

E. Evidence on local advertising from advertising agency interviews

Economists Incorporated interviewed seven advertising agency executives and one media consultant on a confidential basis to obtain information on competition between advertising sold to local advertisers by broadcast television stations and other advertising media in a certain urban area. The individuals interviewed were at advertising agencies that spend significant sums of money on broadcast television advertising in that urban area.[223]

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221 David Nagel, *The ResponseTV Long-Form Media Index*, RESPONSETV, April 1995, at 6–10.

222 *Reply Comments of the Bureaus of Consumer Protection, Economics, and Competition of the Federal Trade Commission,* In the Matter of Amendment of 47 C.F.R. §73.658(j): The Syndication and Financial Interest Rule, BC Docket No. 82–345, FCC, Jan. 27, 1983, at 31.

223 For brevity, the media consultant will be referred to as an advertising agency executive.

All advertising agency executives noted that advertising budgets are allocated among media based on cost-effectiveness. The driving forces are effectiveness, price per eyeball or ear, and coverage. Discussions with these individuals revealed that if broadcast television advertising rates increased, some local advertisers would move to cable television, radio and to a lesser extent newspapers and other print media. One media planner noted that if broadcast television prices are too high, she would take money out of that medium and increase each other medium's share of the advertising budget. One executive noted that she would absolutely move advertisements to radio. Another noted that radio is the closest substitute for broadcast television. Another noted that she would move small clients out of television into radio and print. Another would redirect money from broadcast television to radio and cable. Another would buy radio very heavily, buy cable and buy outdoor. Yet another would reduce broadcast television and use other media such as radio, cable television, print, direct mail and outdoor.

The executives uniformly noted that the nature of the adjustment to an increase in broadcast television advertising rates would depend on each specific client's objective, budget and needs. Since each client is different, it is hard to generalize about what will happen in response to an increase in broadcast television advertising rates. For instance, one media consultant noted that cable does well for certain types of advertisers, but not for all.

Three of the executives that were interviewed provided specific examples of competition :

- One person cited his recent experience in an urban area where the price of broadcast television spots increased. This executive responded by negotiating annual deals with the stations in order to achieve better rates and moving some advertising dollars from television to radio.
- Two executives mentioned a recent attempt by the local newspaper to raise rates to certain local advertisers. Some advertisers re-

sponded by pulling out of print and putting their money into broadcasting.

Many media planners initially allocate a portion of the advertising budget to print and another portion to broadcast, based on cost and effectiveness. A buyer then allocates the broadcast budget among broadcast television, radio and cable television. If the price of broadcast television advertising increases, the broadcast media buyer will reallocate the broadcast advertising dollars with an increased emphasis on radio and cable. If the price increase persists, the buyer will ask the media planner whether the allocation of the total advertising budget between broadcast and print media is efficient. The media planner will then determine whether to shift dollars out of broadcast and into print. Hence, the initial movement of dollars in response to a broadcast television advertising rate increase is likely to be largely to radio and cable television. After the rate increase has persisted for some time, and media planners perform their quarterly or semi-annual reviews, there may be an adjustment of the media mix between print and broadcast. The longer the price increase persists, the more adjustments can be made.

The basic message from the interviews was that many options are available to most local advertisers, and that television stations have to price competitively in order to maintain sales. Advertising agency planners look at the cost, effectiveness and coverage of the different media, and if there are changes in relative costs among the media then they move money. However, since each client is different, the response is not uniform across advertisers.

F. Non-video advertising competes with video advertising

The Commission has tentatively concluded that radio and print compete with television in local advertising markets but not at the national level. This might make sense if there were no national radio networks, no national newspapers, no national magazines, and no equivalent for radio stations, newspapers and magazines of national spot television advertising. In fact, however, there are national radio networks, national news-